

HUMR5502

Nils Butenschøn

Dealing with Diversity: Human Rights Approaches to Ethnic Conflict

Political responses I

Thematic rights involved

- States:
 - Sovereignty
 - Territorial integrity
- Groups:
 - Self-determination
 - Autonomy
 - Collective rights
 - Minority rights
- Individuals:
 - Human rights
- Which instruments are available for the realisation of these rights?
- Our focus: How to build democracy and human rights protection in deeply divided societies

Two lectures

- Political responses I: Theory. The 'citizenship approach' and international human rights law. Models of power-sharing. Concepts and approaches.
- Political responses II: Power-sharing in practice. Discussions of group presentations.

Lecture 1: Two major questions

- (A) The political system: How does it deal with diversity?
- (B) What are the consequences in terms of the respect for and the protection and fulfillment of human rights?
 - Framework of analysis: Citizenship and power-sharing.

More specific questions

- From a social science perspective, a number of questions and research themes can be identified, such as:
- What is **discrimination** as a social and political phenomenon (definition)?
- How can **diversity** on a group basis in a society be explained?
- Which **forms** do diversity take – a focus on socio-cultural forms?
- How do states meet the challenges of diversity in terms of **policies**?
- How can **power-sharing** as a common **response** by state authorities be explained?

HOW-questions

- How can insights into these questions help us understand the nature of ethnic conflicts that we observe; both what they seem to have in common, and what distinguish them as unique historical phenomena. (Eriksen).
- How can we on this basis be helped in suggesting strategies, based on human rights standards, for solving the kinds of problems that are caused by diversity? (Eide; Butenschøn)

The historical setting

- The idea of the nation-state. Origins. Each 'nation' should have the right to be organised as a sovereign people within its own 'state'
- United Nations providing definitions of rights and obligations of States and citizens.
- Discuss strengths and weaknesses of the nation-state as a universal model for unifying and assimilating ethnically diverse societies.

Europe: A process of gradual socio-political integration (T.H. Marshall)

- 1. Civil citizenship: Equality before the law (18th century)
- 2. Political citizenship: Political participation (19th century)
- 3. Social citizenship: Social equality, the welfare state (20th century)
- Modern citizenship is “inclusive and complete”. But what if it doesn’t work?

Meeting the challenges: Strategies and solutions

- State strategies (top-down)
- The citizenship approach (social contract)
- Principles for distributing rights (political theory)
- Elements of power-sharing (institutional design)

State strategies, overview

- States can use its monopoly of coercive power to:
- (a) **Centralise state institutions** in order to protect the hegemony of the ruling elite.
- (b) **Centralise** in order to impose solutions to conflicts between socio-cultural groups in society.
- (c) **Decentralise** in order to allow sub-national autonomy and thereby stabilise the state structure.
- (d) **Decentralise** to prevent unified opposition to the central government ('divide and rule').

The citizenship approach

- The study of the **contractual relationship** (in the broadest possible meaning of *contractual*) between the state and the inhabitants under its jurisdiction (Butenschøn).
- Under what conditions are such relationships created, how are rights and obligations codified and perceived by the parties, what are the modalities for changing the terms, and what instruments of retribution are available to the parties in case of conflict?

The significance of citizenship

- The right to citizenship is the right to have rights. The power of citizenship is best known by those who are denied it. To the extent that citizenship rights enable a person to enjoy other rights, the right to a citizenship must be considered a *basic* human right. (See Eide for legal aspects)
- Note: A great empirical variety hidden behind formal state sovereignty. The prerogative of state authorities to issue citizenship laws and regulations – but not without limitations.

Citizenship and state formation

- These questions direct our attention towards three basic dimensions of state formations:
 - The **normative** foundation (constitution, ideology)
 - The field of **actors**; their interests and strategies
 - **Instruments of power** available to actors (rulers, opposition, individuals)

The politics of citizenship

- “The politics of citizenship” in a given country is the **dependent variable** and reflect the dynamics created by the **interplay** between the three dimensions; it is an analytical gateway to insight into the dynamics of regime formation.

The politics of citizenship

- Since citizenship is such an important right – it is the right to have rights in a state – and since there is no legally binding convention on citizenship, many governments seek to limit the access to citizenship through mechanisms of *inclusion* and *exclusion* (i.e., Gulf countries)

Group rights and individual rights

- On what basis are rights defined, given, and distributed?
 - According to international human rights standards, the basic principle is that human rights should protect equal rights and freedoms of the **individual**. Rights are normally defined on that level.
 - But we know that the rights of many individuals are violated or threatened because they belong to a **group** (minority or otherwise marginalised group).
 - The discrimination/inequality problem here cannot (only) be addressed on the individual level – it is a **structural** problem on the group level.

Group rights in conflict-ridden political systems

- The question of group rights becomes particularly critical in divided and conflict-ridden societies.
- Qualities of post-conflict political systems:
 - The basic challenge is to design political institutions that at one and the same time provide a **democratic balance** between the groups while **protecting individual human rights**; address the most contentious issues so that **stability and lasting peace** has a chance; determine rules for decision-making that allow for **efficiency** in the running of state affairs.

Constitutional principles for distributing rights

- **Singularism:** The state promotes the identity of one particular group
- **Pluralism:** The state is neutral in relation to the plurality of groups in society
- **Universalism:** Group identities are irrelevant in relation to distribution of rights in society

Constitutional principles: Singularism

- **Singularism** refers to the idea that the state community is constituted by a single and specific collective identity, and that the state is the **embodiment** of that identity. Other identities may be tolerated, but have a lower status. This principle can be found as the basis of authority and political organization in a number of states. The question is to what extent it leads to **discrimination**. Singularist states tend to be non-democratic. Give examples

Constitutional principles: Pluralism

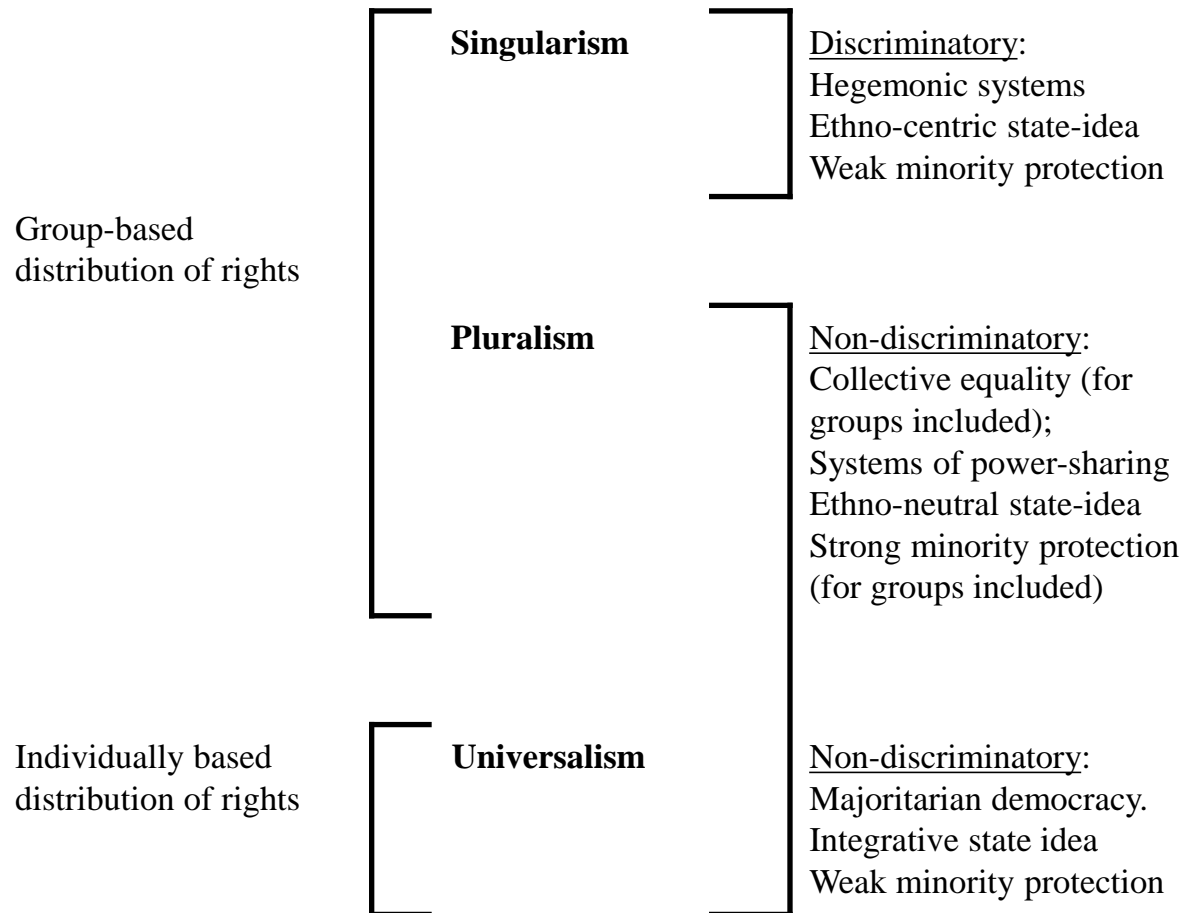
- **Pluralism** refers to a conception of the national community as composed of separate subgroups **without preferences** accorded to any of these groups. This conception forms the normative core of political systems of **power-sharing**. The role of the state in plural systems is not to promote a specific communal identity, but to facilitate politics of compromise that give the different groups a fair say in the political decision-making processes. How to secure equality? (Distribution based on relative numerical strength vs. affirmative action/quotas.)

Constitutional principles: Universalism

- **Universalism** refers to a normative presumption that group-specific identities within a political community are **irrelevant** when it comes to each individual member's status and rights vis a vis the state. The political community (the *demos*) constitutes the universe within which every adult and sane person is considered equal.

Principles of distribution of rights

- and its effect on political regime formation



The purpose of power-sharing

- **Improving democracy** (strengthening marginalised individual's relative capacity for political influence; i.e., quotas, representation, etc.)
- **Protecting minority rights** (devolution of powers: Elements of autonomy, self-determination, etc.)
- **Managing conflict**
 - A policy of inclusion (i.e., so that a minority does not have reason to rebel)
 - A policy of exclusion (i.e., so that a minority is given a token of self-determination without real power and thus kept on a distance from the centres of power)
 - A policy of divide and rule (i.e., so that several minorities are prevented from forming a coalition that could threaten majority rule or the rule of a dominant minority)

Instruments of power-sharing

- **Devolution of powers:** Territorial (federalism) and non-territorial (consociational)
- **Representation:** Qualities of the electoral system
- **Form of government and grand coalitions:** Parliamentary or presidential system; minimal winning (majority) coalition or grand coalition (consensus)
- **Decision making rules:** Absolute or qualified majority-decisions; Minorities should not be outvoted when their vital interests are at stake; Sunset clauses: Should power-sharing arrangement be permanent or temporary?

Effects of power-sharing

(Ref. Binningsbø 2013)

- (+) **Strengthening democracy** (collective equality, incentives for policies of compromise)
- (-) **Undermining democracy** (prevent opposition, excludes the most marginalised groups)
- (+) **Building peace** (inclusion and devolution of power reduce conflict in society, but must overcome distrust and commitment problems)
- (-) **Reproducing armed conflict** (freezes conflict cleavages, empower conflict entrepreneurs, prevents transitional justice)
- What is the +/- balance in specific cases?

Political Organisation of State Territories. A Typology

(Butenschøn 2000:18)

Territorial Principles

Constitutional Principles

The Unitary State

The Non-Unitary State

Separate Territories

Singularism

Ethnocratic systems

Imposed/dominated self rule

Ethnic "Homelands"

Pluralism

Consociational systems

Cantonization, ethnic federation

Partition/separate states along ethnic lines

Universalism

Majoritarian systems

Regionalisation, functional federation

Partition/separate states along functional lines

Summing up and assignment

- The political science approach
 - The nation state as a state formation
 - How does the nation state deal with ethnic diversity?
 - Top-down and contractual perspectives
 - Models of power-sharing
 - Principles for distributing rights
 - Elements of power-sharing
 - Outcomes and regime formations

Assignment and case study

(For next lecture)

- Assignment:
- A country X with a population of about 20 million people has experienced an internal conflict between the major ethnic groups in the country. Representatives of these groups are now meeting in negotiations with the mandate of proposing **general constitutional principles for power-sharing**, including a system of representation.

Assignment (cont.)

- The aim is to arrive at a future political system based on the following criteria:
- Respecting international democratic and human rights standards;
- Giving the contending groups a fair say in the decision-making processes;
- Securing the best possible efficiency in the decision-making processes.

Assignment (cont.)

- Four groups are represented in the negotiations facilitated by a team of international mediators:
- (A) The majority, comprising 65 % of the population;
- (B) The largest minority, 20 % of the population;
- (C) A smaller minority, 10 % of the population;
- (D) The smallest minority, an indigenous group, 5 % of the population

Assignment (cont.)

- The conflict broke out when the minorities B, C, and D revolted against the traditional domination by the majority (A). The open conflict ended after international mediation. An interim constituent assembly was convened with the purpose of agreeing on a new constitution. The constitution will be presented for a referendum at a later stage.
- As renowned international experts **you** have been commissioned by the Constituent Assembly to give advice on some of the issues to be resolved in a power-sharing agreement.

Assignment (cont.)

- Questions:
- Which **human rights standards and mechanisms** are the most relevant to be applied in such cases of peace-building?
- Which **constitutional and territorial principles** would you propose so that the interests and rights of the contending groups and minorities will be protected in the post-conflict system?
- Which **elements of institutional power-sharing** would you propose in this case?
- Which **challenges and dilemmas** would you expect to encounter in the implementation of the proposed arrangements?

Elements of power-sharing

- **Devolution of powers:** Territorial (federalism) and non-territorial (consociational)
- **Representation:** Qualities of the electoral system
- **Form of government and grand coalitions:** Parliamentary or presidential system; minimal winning (majority) coalition or grand coalition (consensus)
- **Decision making rules:** Absolute or qualified majority-decisions; Minorities should not be outvoted when their vital interests are at stake; Sunset clauses: Should power-sharing arrangement be permanent or temporary?

Alternative

- Choose and describe a real case; a country ridden by internal conflict between groups.